

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MICHIGAN**

**In re: Adam Beauford Foltz
and Sarah Anne Foltz**

Case No. 11-04968-swd

**11763 Sequanota Heights Drive
Charlevoix, MI 49720**

Chapter 7

**xxx-xx-5157
xxx-xx-0951**

Honorable Scott W. Dales

Debtors.

**Stonebrook Construction, LLC,
A Michigan Limited Liability Company,**

Case No. 11-80380-swd

Plaintiff,

v

Adam Beauford Foltz,

Defendant.

AFFIRMATIVE DEFENSES

NOW COMES Defendant, Adam Beauford Foltz, by and through his attorney, Edward F. Engstrom of Barron & Engstrom, P.L.C., as follows:

1. Defendant did not intend to hinder, delay or defraud a creditor or officer of the estate charged with custody of the property.
2. Defendants have not transferred, removed, destroyed, manipulated, concealed or permitted to be transferred, removed, destroyed, manipulated, concealed property of theirs within one year from the date of filing of their petition.
3. Defendants have not concealed, destroyed, manipulated, falsified or failed to keep or preserve any recorded information, including books, documents, records and papers from

which the debtors' financial condition or business transactions might be ascertained.

4. Defendants did not knowingly and/or fraudulently, and/or in connection with their bankruptcy case, make a false claim or account.
5. Plaintiff has breached any contract which may exist between these parties and this breach precludes any recovery.
6. Any damages Plaintiff alleges exist are not causally related to any actions taken by Defendant or its failure to act.
7. Plaintiff has waived its right to recovery.
8. Plaintiff's custom and practice precludes recovery.
9. A binding written contract between the parties fails to exist.
10. Plaintiff failed to state with particularity circumstances constituting fraud, mistake, delay or hindering.
11. Genuine issues of material fact fail to exist and as a result Plaintiff's claims should be dismissed.
12. Any and all documentation Plaintiff has attached to the Complaint, or failed to attach, does not support its claim(s).
13. The claims filed by the Plaintiff are frivolous.
14. A negotiated satisfaction exists which bars Plaintiff from pursuing said claim stated in the Complaint.
15. Plaintiff failed to mitigate damages and as a result any recovery should be barred.
16. Plaintiff's Complaint should be dismissed because of payment.
17. Plaintiff has failed to join all necessary parties.
18. Plaintiff's alleged injuries or damages, if any exist, were caused, in whole or in part, by the

Plaintiff's action or inaction recognized by law.

19. Plaintiff failed to state a claim upon which relief may be granted, therefore, summary disposition is warranted.
20. Payment was made to the General Contractor by the property owner for the benefit of Plaintiff.
21. Plaintiff's claims are barred in whole or in part by the equitable doctrines of laches estoppel and/or unclean hands.
22. Defendant did not make a material representation concerning Plaintiff's misrepresentation claims.
23. Any representations Defendant did make were true.
24. Plaintiffs did not rely upon any representations made by Defendant.
25. Plaintiff has not suffered any damages regarding their alleged claims.

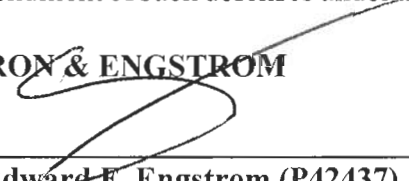
WHEREFORE, Defendant, Adam Beauford Foltz, respectfully requests this Honorable Court dismiss Plaintiff's Complaint and grant Defendant such relief, including costs and attorney fees, as the Court deems fair and just.

NOTICE OF RIGHT TO AMEND AFFIRMATIVE DEFENSES

Defendant reserves the right to amend these affirmative defenses upon learning of any further facts or information through discovery that would justify amendment of such defenses under the law.

BARRON & ENGSTROM

Dated: September 12, 2011


By: **Edward F. Engstrom (P42437)**
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